without objection—*Eastick* v. *Southern Ry. Co.* (Ga.), 42 S. E., 499. Lumpkin, P. J., in delivering the opinion, said in part:

"Such testimony, save as to well-defined exceptions, is inadmissible for any purpose, because it is wholly without probative value. The fact that it is admitted cannot give it any such value. In other words, testimony of this character which does not come within any of the exceptions just referred to is, in legal contemplation, wholly worthless, and has been so regarded and treated through all the ages of the English law. While a party who permits hearsay testimony to be introduced without objection, or who has himself introduced such testimony, will not be heard to complain of the fact that it went to the jury, and must suffer whatever disadvantage may come of their giving it sufficient weight to turn the scale against him when there is enough legal testimony before them to support a finding in favor of his adversary, it will not do to say that such a finding, resting upon hearsay testimony alone, can lawfully stand merely because the losing party did not object to such testimony when offered by his adversary, or himself introduced the same. No plaintiff should ever, under any circumstances, lose his case when there is evidence to warrant a recovery by him, and the verdict or judgment in favor of the opposite party has nothing upon which to rest but inadmissible hearsay testimony.

"It ought not to require the citation of authority to establish the soundness of these time-honored and thoroughly settled propositions. We will, however, as it happens to be before us, call attention to the case of *Bank* v. *Wooddy*, 10 Ark. 638, which upon its facts is closely in point, and in which it was held that: 'Hearsay is inadmissible, not only because it supposes better evidence in existence, but on account of its intrinsic weakness and incompetency to satisfy the mind; and the admission of this kind of evidence without objection does not give it any new attribute or weight, its nature and quality remaining the same so far as its intrinsic weakness and incompetency to satisfy the mind are concerned.' In the opinion delivered by Mr. Justice Scott, he makes it very clear that ordinary hearsay testimony should not be treated as sufficient to establish any fact."

INJUNCTION BONDS—ATTORNEY'S FEE AS ELEMENT OF DAMAGE.—This much mooted question has recently been passed upon by the Supreme Court of Oklahoma Territory, which follows the rule in *Oelrichs* v. *Spain*, 15 Wall. 211, that attorney's fees are not a proper element of damage to be proven in an action upon an injunction undertaking. *Frantz* v. *Taylor*, 69 Pac. 794. While it does so because, being a territorial court, the decision of the Supreme Court of the United States is binding upon it, even where the case does not involve the jurisdictional amount requisite for an appeal, it is manifest that the court approves the rule upon its merits.

In Virginia the question was directly passed upon in *Wisecarver* v. *Wisecarver*, 97 Va. 452, 5 Va. Law Reg. 462, in which *Oelrichs* v. *Spain* was followed. See also 5 Va. Law Reg. 565; *Burruss* v. *Hines*, 94 Va. 413, where it was held that attorney's fees incurred by a plaintiff in obtaining an injunction against a tort, could not be recovered as damages in a subsequent action for damages for the tort.

In West Virginia, the opposite view was approved in *State* v. *Medford*, 34 W.

Va. 633. The weight of authority of the State courts is that a reasonable amount paid counsel for securing the dissolution of an injunction is a proper element of damages in a suit on a bond conditioned "for the payment of all costs and of all damages sustained in case the injunction should be dissolved." This view is taken by the later cases in the courts of New Hampshire, New Jersey, Alabama, Florida, New York, Missouri, California, Indiana and Montana, while the contrary is held in Pennsylvania, Texas, Nebraska, Maryland, Mississippi and Tennessee. One phase of the question, upon which there seems to be a degree of harmony at least, is that when the fees of counsel are allowed, they are to be paid them for their services only in procuring the dissolution of the injunction. 2 High on Injunctions, 1686.

This conflict between the views of the State and Federal courts suggested the problem propounded in the dissenting opinion of Mr. Justice Harlan, in the case of *Tullock* v. *Mulvane* (decided March 3, 1902, *ante* p. 55), as arising where two actions are brought in the Federal court (there being diversity of citizenship in each case), one on an injunction bond executed in a Federal court and the other upon a like bond executed in a State court. "What would be the ruling as to the measure of damages?" says the learned judge. "Would the court disallow counsel fees in the first case, and allow them in the second case, where the highest court in the State had established the principle that counsel fees could be recovered?"

Savings Banks—By-Laws—Lost Book—Forged Order.—The negligence of a depositor in a savings bank in losing his book does not excuse the officers of the bank from the exercise of reasonable care in taking precautions to prevent payment to an impostor. This is true, notwithstanding the existence of a by-law in effect requiring immediate notice to the bank by the depositor of the loss of his book. The adoption of rules, regulations, and conditions which affect the contractual relations between a savings bank and its depositors may be shown by their long use, with the knowledge and approval of the trustees, as well as by record of a formal vote. The signature of a depositor thereto is not the only way to show his agreement to be bound by the rules and regulations of a savings bank. The agreement may be evidenced by his conduct. *Ladd* v. *Augusta Savings Bank* (Me.), 52 Atl. 1012.

There is a great deal of old law in this case, such as that a bank is not exempt from liability to a depositor by reason of its payment of a forged check drawn in his name. But the foregoing points are worthy of note, and in our opinion are rightly adjudged. The depositor is held to be presumed to have agreed to be bound by the rules, so that they become part of his contract with the bank. Citing *Gifford* v. *Bank*, 63 Vt. 108, 25 Am. St. Rep. 744, 11 L. R. A. 794; *Heath* v. *Bank*, 46 N. H. 78, 88 Am. Dec. 194. Further, as stated *supra*, he is held to a full knowledge of the customs of the officers of the bank, as well as the recorded rules of the trustees. But the case was adjudged against the bank upon the ground that these customs and rules cannot relieve the officers of the bank from the exercise of such care as would be reasonable under all the circumstances to protect the interests of the depositor and prevent loss to him. The court was of opinion, under the circumstances of the case, that this degree of care had not been shown.